

## **PART 4**

### **PHASE I**

#### **PROPOSAL INSTRUCTIONS**

# WASHINGTON STATE FERRIES

## NEW 130 – AUTO FERRIES DESIGN AND BUILD CONTRACT

### PHASE I PROPOSAL INSTRUCTIONS

Parties interested in submitting a proposal for Washington State Ferries' (hereinafter called "WSF") New 130-Auto Ferries Design and Build Contract (hereinafter called the "Contract") must comply with the following provisions of the modified Request for Proposals (RFP).

#### 1. INTRODUCTION

This RFP Volume IB provides information on development and submittal of Phase I proposals for a Contract to design and build up to four (4) new 130-auto ferries pursuant to this modified RFP.

It is recognized that the Phase I proposals cannot be prepared until prospective proposers receive the necessary information that will be contained in the remaining RFP Volumes to be issued at a later date (see RFP Schedule). As such, the Phase I proposals will not be submitted to WSF until August 2004, as shown in the RFP Schedule. However, Volume IB has been issued at this time in order to provide prospective proposers with an early review of the Phase I proposal requirements. This RFP Volume I B will also assist in differentiating between the prequalification requirements in RFP Volume I A and the Phase I proposal requirements in RFP Volume I B.

#### 2. PRE - PROPOSAL CONFERENCE

**A Pre-Proposal Conference will be held at 9:00 a.m. on Wednesday, July 7, 2004, in downtown Seattle.** The location and directions, etc., will be provided in an upcoming RFP Addendum or Notice. Attendance at the Conference is optional, but all interested parties are encouraged to attend. Questions proposed during the Conference will be answered by WSF in a written Addendum sent to all prospective proposers. WSF will not grant any contractual relief for failure to attend the Conference.

1  
2 **3. PROPOSAL DUE DATE**  
3

4 **The closing date for receipt by WSF of Phase I proposals is 1:00 p.m. on**  
5 **Monday, August 2, 2004.** See Section 12, Delivery of Proposals, for additional  
6 information regarding submittal of proposals.  
7

8 Due to the format of the RFP process, the Phase I proposals will not be publicly  
9 opened or read. Any proposal received after the Proposal Due Date shall be rejected  
10 and returned to the proposer unopened.  
11

12  
13 **4. PREQUALIFICATION**  
14

15 Prequalification requirements and the prequalification process are provided in RFP  
16 Volume IA. A notice of prequalification is a prerequisite for submission of a Phase I  
17 proposal.  
18

19  
20 **5. CORPORATE REGISTRATION**  
21

22 The laws of the state of Washington require that out-of-state corporations secure  
23 authority from the Secretary of State to transact business in the state of Washington.  
24 Accordingly, before the state can enter into an agreement or a contract with an out-of-  
25 state or foreign corporation conducting business within the state of Washington, such  
26 corporation must comply with Washington's corporation laws. Consult the Office of  
27 the Secretary of State regarding the nature of your intended business, if any, within  
28 the state of Washington. Information and application blanks regarding corporate  
29 registration may be obtained from the Corporations Division, Office of the Secretary  
30 of State, Olympia, Washington 98504. The corporate information line is  
31 360.753.7115.  
32

33  
34 **6. ESTABLISHED BUSINESS**  
35

36 To be considered responsive, a proposer must, by the final Proposal Due Date, or  
37 prior to that time if required by law, be an established business firm with all required  
38 licenses, bonding, facilities, equipment and trained personnel necessary to perform  
39 the work specified in the RFP. WSF reserves the right to require proof of such  
40 compliance within five (5) calendar days from the date of request.  
41  
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1  
2 **7. RFP PACKAGE AND INTERPRETATION**  
3

4 Copies of the RFP package may be purchased for the non-refundable fee of \$200.00  
5 each by contacting:  
6

7 **Mailing and Pick-up Address** (NW Corner of 2<sup>nd</sup> and Broad)  
8

9 Washington State Ferries  
10 2911 2<sup>nd</sup> Avenue Phone: 206.515.3606 (recording)  
11 Seattle, Washington 98121-1012 Fax: 206.515.3605  
12

13 **Attn: Tim McGuigan, Dir., Legal Services and Contracts**

14 Phone: 206.515.3601  
15 Fax: 206.515.3605  
16 E-mail: mcguigan@wsdot.wa.gov  
17 (cc: dietzbe@wsdot.wa.gov)  
18

19 To facilitate timely responses, it is WSF's intent to accept questions during the RFP  
20 process only from proposers (i.e., prime contractors). WSF may not accept, and has  
21 no obligation to respond to, inquiries from subcontractors, suppliers or vendors.  
22 Proposers should submit each question by both telefax and e-mail only, to WSF's  
23 Director of Legal Services and Contracts (see above). Proposers should also send a  
24 courtesy copy (cc) of each e-mailed question as indicated above. If there is any  
25 discrepancy between the faxed and e-mailed versions of a question, then the faxed  
26 version will control. Questions must be submitted soon enough to allow: (i)  
27 development and issuance of a written response; and (ii) consideration of the  
28 response by all proposers before submission of their proposals.  
29

30 Additionally, if a proposer requires an explanation, clarification, or interpretation of  
31 any part of the RFP documents, it may submit to WSF's Director of Legal Services  
32 and Contracts a written request for an interpretation thereof. All requests for  
33 interpretation are subject to the inquiry limitations specified in the preceding  
34 paragraph. WSF will not be responsible for any other explanations or interpretations  
35 of the RFP documents. Oral explanations, interpretation, or instructions given by  
36 anyone before award of the Contract will not be binding on WSF.  
37

38 Any information given to a proposer concerning any of the RFP documents will be  
39 furnished to all proposers as an RFP Addendum if WSF deems that information to be  
40 necessary in submitting proposals or if WSF concludes that the lack of the  
41 information would be prejudicial to other proposers.  
42  
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1  
2 **8. EXAMINATION OF RFP DOCUMENTS**  
3

4 The proposer shall carefully examine the RFP documents. Submittal of a proposal  
5 shall be conclusive evidence that the proposer has made its examinations and  
6 understands all requirements for the performance of the Contract work. The proposer  
7 further warrants, agrees and acknowledges by submitting a proposal that it:  
8

- 9 A. Has taken steps reasonably necessary to ascertain the nature and scope of the  
10 Contract work; and understands that failure to do so will not be justification  
11 for a change order, protest or claim against WSF;  
12
- 13 B. Has investigated and satisfied itself as to the general and local conditions  
14 which can affect the Contract work or its cost, including but not limited to:  
15
- 16 1. Conditions bearing upon acquisition, transportation, disposal, handling  
17 and storage of materials;  
18
- 19 2. The availability of labor, materials, water, electric power and access  
20 roads, and employee and WSF representative administrative facilities  
21 and parking;  
22
- 23 3. Uncertainties of weather, tides, wind or similar physical conditions at  
24 the work site, especially for launching of vessels;  
25
- 26 4. The character of equipment and facilities needed preliminary to, and  
27 during performance of, the Contract work;  
28
- 29 C. Has satisfied itself as to the adequacy of time allowed for the completion of  
30 the Contract work;  
31
- 32 D. Has not discovered any patent ambiguities, other than those identified in  
33 writing to WSF that would be discovered by a prudent contractor in preparing  
34 its proposal;  
35
- 36 E. Has read, fully understands and intends to sign the Memorandum of  
37 Agreement (MOA) for Phase II;  
38
- 39 F. Has ascertained the requirements for Phase III as set forth in RFP Volume II  
40 (Phase II Technical Proposal Requirements) and agrees that if selected for  
41 Phase III the proposer will enter into a contract with WSF for the construction  
42 of the ferries;  
43

- 1  
2 G. Understands that WSF may at any time during Phase II modify or change the  
3 RFP, including the Outline Specifications delineating vessel characteristics to  
4 which Phase II participants are to design the vessels. The proposer further  
5 understands that such modifications or changes may be done without  
6 compensation to Phase II participants;  
7  
8 H. Understands the Outline Specifications include requirements for: (i) design  
9 work necessary for the Technical Proposals in pre-award Phase II; and (ii)  
10 detailed design and construction work in post award Phase III; and  
11  
12 I. Accepts that the pre-set honorarium shall be the maximum (and only)  
13 compensation to be paid by WSF to unsuccessful bidders who must have  
14 submitted Technical Proposals approved by WSF during Phase II.  
15

16 Any failure of a proposer to take the actions acknowledged above shall not relieve the  
17 proposer from responsibility of estimating properly the difficulty and cost of  
18 successfully performing the Contract work, or from proceeding to successfully  
19 perform the Contract work without additional expense to WSF.  
20

21 The proposer agrees that WSF shall not be liable to it on any claim for payment or  
22 additional time or any claim whatsoever if the claim directly or indirectly results from  
23 the proposer's failure to investigate and familiarize itself sufficiently with the  
24 conditions under which the Contract is to be performed.  
25

26 The proposer shall be familiar and comply with all Federal, State and local laws,  
27 ordinances and regulations that might affect those engaged in the Contract work.  
28 WSF will not consider any plea of misunderstanding or ignorance of such  
29 requirements.  
30

31 No claim shall be allowed because of any ambiguity in the RFP or the Construction  
32 Contract if: (i) the proposer discovers an ambiguity, but fails to notify WSF; or (ii)  
33 the proposer failed to discover a patent ambiguity that would be discovered by a  
34 reasonably prudent contractor in preparing its proposal.  
35

36 For an explanation or interpretation of the RFP documents, please refer to Section 7,  
37 RFP Package and Interpretation.  
38  
39

1  
2 **9. PREPARATION OF PROPOSAL**  
3

4 Each completed proposal shall be signed by the proposer.  
5

6 If a corporation makes the proposal, it shall be signed in the name of the corporation,  
7 followed by identification of the office the signer holds in the corporation.  
8

9 If the proposal is made by a partnership, it shall be so stated and shall contain the  
10 names of each partner and shall be signed in the firm name, followed by the signature  
11 of an authorized partner(s).  
12

13 If the proposal is made by a joint venture, a certified copy of the joint venture  
14 agreement shall accompany it, plus any other documents evidencing the authority of  
15 all parties to the joint venture to enter into such an agreement. The proposal shall be  
16 signed by one (1) or more individuals authorized by the joint venture.  
17

18  
19 **10. MINORITY / WOMEN BUSINESS ENTERPRISES**  
20

21 Certified Minority/Women Business Enterprises (M/WBEs) are encouraged to  
22 participate in the RFP process. The Construction Contract includes a M/WBE  
23 participation goal; there are no M/WBE participation goals for the technical proposal  
24 development portions of the project.  
25

26 Please refer to RFP Volume III, Phase III Contract Provisions, for the goals,  
27 provisions and laws pertaining thereto.  
28

29  
30 **11. PROPOSAL SECURITY**  
31

32 There is no Proposal Security required for the pre-bid phase of the RFP. Instructions  
33 for the Bid Security to be submitted in Phase III are provided in RFP Volume III.  
34  
35

1  
2 **12. DELIVERY OF PROPOSALS**  
3

4 The proposal must be properly addressed and submitted to WSF as follows:  
5

6 **Mailing and Street Address: (for U.S. mail, express mail and personal delivery)**  
7

8 **Washington State Ferries**  
9 **Legal Services and Contracts Department**  
10 **2911 2<sup>nd</sup> Avenue**  
11 **Seattle, Washington 98121-1012**  
12

13 **Attn: Tim McGuigan, Dir., Legal Services and Contracts**  
14

15 **Re: NEW 130 - AUTO FERRIES DESIGN AND BUILD**  
16 **CONTRACT NO. 00-6674**  
17

18 **The closing date for receipt of the initial and final proposals shall be in**  
19 **accordance with Section 3, Proposal Due Date, herein.**  
20  
21

22 **13. PROPRIETARY DATA**  
23

24 Any document(s) or information which a proposer believes is exempt from public  
25 disclosure (RCW 42.17.310) shall be clearly identified by the proposer, marked with  
26 the RFP project name, the proposer's name, and the words "Proprietary Data" along  
27 with a statement of the basis for such claim of exemption. Alternatively, a proposer  
28 may insert a global Proprietary Data Statement at the front of its proposal, or any  
29 portion thereof. For such consideration and use, a Sample Proprietary Data Statement  
30 is attached hereto and incorporated herein as Exhibit A.  
31

32 WSF's sole responsibility shall be limited to maintaining the above data in a secure  
33 area and to notify such proposer of any request(s) for disclosure within a period of  
34 five (5) years from the award date. Failure to so label such materials, or failure to  
35 provide a timely response after a notice of request for public disclosure has been  
36 given, shall be deemed a waiver by a proposer of any claim that such materials are, in  
37 fact, so exempt.  
38

39 Notwithstanding such limitations, all proposal documents submitted under this RFP  
40 process shall be considered confidential until WSF has selected the apparent  
41 successful proposer in Phase III.  
42  
43



1  
2 **14. DATA ACCESS**  
3

4 WSF shall be solely responsible for the proposal evaluation process and selection of  
5 the best qualified proposers. However, to accomplish such task, WSF reserves the  
6 right to utilize the expertise of any of its project consultants on technical issues  
7 relating to the project. Therefore, proposers must allow WSF project consultants  
8 access to all proposal data, or the proposal will be deemed non-responsive and will be  
9 rejected.  
10

11  
12 **15. RESPONSIBILITY**  
13

14 WSF, at its discretion, **may** reject a proposal if it determines that a proposer is not  
15 responsible for any of the following reasons:  
16

- 17 A. Evidence of collusion with any other proposer or proposers is found.  
18 Participants in such collusion will be disqualified from submitting proposals  
19 on any further work;  
20  
21 B. An unsatisfactory performance record exists based on past or current WSF or  
22 WSDOT work;  
23  
24 C. There is uncompleted work (WSF or otherwise) which might hinder or  
25 prevent the prompt completion of the Contract work;  
26  
27 D. The proposer fails to pay or settle bills for labor or materials on past or current  
28 contracts;  
29  
30 E. The proposer has failed to complete a written public contract, or has been  
31 convicted of a crime arising from a previous public contract;  
32  
33 F. The proposer is unable, financially or otherwise, to perform the Contract  
34 work;  
35  
36 G. The proposer is not authorized to do business in the state of Washington; or  
37  
38 H. There are any other reasons deemed proper by WSF.  
39

40 During proposal evaluation, WSF reserves the right to make reasonable inquiry to  
41 determine the responsibility of any proposer. Requests may include, but are not  
42 limited to, financial statements, credit ratings, references, record of past performance  
43 and on-site inspection of a proposer's or any subcontractor's facilities. Failure to  
44 respond to such requests will be sufficient reason to consider the proposal non-  
45 responsive.  
46

1  
2 **16. ALTERATIONS, MISREPRESENTATIONS**  
3

4 A proposer shall not misrepresent its prequalification information or any component  
5 thereof, its ability to perform the Contract work, or the scope of its product or service  
6 to WSF. Misrepresentation may be cause for: (i) rejection of a proposal; (ii)  
7 cancellation of Contract award; or (iii) termination of the Contract.  
8  
9

10 **17. WITHDRAWAL OF PROPOSAL**  
11

12 At any time prior to the final Proposal Due Date, any proposer may withdraw its  
13 proposal, either personally or by written, telegraphic or facsimile request.  
14

15 For withdrawal by a proposer after being selected to participate in Phase II, see the  
16 section regarding failure of a selected proposer to perform in RFP Volume II.  
17  
18

19 **18. REJECTION OF PHASE I PROPOSALS**  
20

21 WSF reserves the right to: waive informalities in the proposal process, reject any or  
22 all proposals (see next paragraph); republish the call for proposals; or revise or cancel  
23 the Contract work, if in its sole judgment, the best interests of WSF is served thereby.  
24

25 Proposers are notified that WSF reserves the right to reject any or all proposals,  
26 without cause or for any reason. In the event all proposals are rejected, the project  
27 may be deferred indefinitely for re-advertisement, or otherwise.  
28  
29

30 **19. SELECTION FOR PHASE II**  
31

32 **Unless all proposals are rejected, WSF will select a maximum of three (3)**  
33 **proposers for participation in Phase II based on the selection process described**  
34 **in the Phase I Proposal Evaluation document in this RFP Volume.** In the event a  
35 selected proposer elects not to participate at any time after selection, WSF reserves  
36 the right to select the next best qualified proposer (not previously selected) for  
37 participation in Phase II.  
38

39 **Note: The actual number of proposers selected to participate in Phase II may**  
40 **be less than the maximum number specified above.** WSF will make such  
41 determination based upon which proposals are “best qualified” to participate in Phase  
42 II, pursuant to RCW 47.60.816(5).  
43

WSF will notify the successful proposers in writing when they have been selected for participation in Phase II. WSF shall also notify all other proposers that they were not selected. WSF intends to enter into MOAs with the selected proposers following the Phase I proposal evaluation and selection process.

## **20. EXECUTION OF AGREEMENTS**

Within ten (10) calendar days after the selection date, the selected proposers shall return the signed MOAs (see the Memorandum of Agreement for Development of Phase II Technical Proposals Part in RFP Volume II, Phase II Technical Proposal Requirements).

No proposal shall bind WSF until it signs the MOAs, notwithstanding a notice of selection. The proposer shall bear all risks for any Phase II work begun or any materials ordered before WSF signs the MOA.

## **21. PHASE II HONORARIUM**

Pursuant to RCW 47.60.820(8), WSF will pay a preset, non-negotiable honorarium to each unsuccessful proposer in Phase III as reimbursement for a portion of its Technical Proposal preparation cost. The fixed amount of the honorarium will be **Five Hundred Thousand Dollars (\$500,000)** total. Payment of the honorarium will be made upon commencement of the Construction Contract.

In order to be eligible for payment of the honorarium a proposer must meet the following:

- A. Submit a Technical Proposal that has been approved by WSF.
- B. Submit a bid for the Phase III Construction Contract. If a proposer does not submit a bid for whatever reason including inability to get a bid bond or decision to not submit a bid, the proposer will not be eligible for the honorarium.
- C. Be able to be awarded the Construction Contract if determined to be the successful proposer. If the proposer who submits the successful bid for the Construction Contract cannot be awarded the Construction Contract for whatever reason, including inability to get required Contract Security or decision not to accept award of the Construction Contract, the proposer will not be eligible for the honorarium.

1  
2 **22. USE OF CONSULTANTS**  
3

4 WSF has determined that consultants who have performed or are performing work for  
5 WSF on a specific project may not perform work on the same project for another  
6 organization such as a shipyard. This determination is based on the fact that  
7 consultants who perform work for WSF on a specific project are in a conflict of  
8 interest situation if they perform work on the same project for another organization  
9 (e.g., a shipyard). This restriction applies regardless of the differences of  
10 involvement or disciplines worked on for WSF and for another organization.  
11

12 Therefore, proposers to WSF, prime contractors to WSF and subcontractors may not  
13 engage the services of any firm for work related to this project if that firm has  
14 performed work (or is performing work) on this project for WSF. This includes  
15 Naval Architect firms, engineering firms, testing facilities, material vendors and any  
16 other firms working on this project for WSF. However, this does not preclude the  
17 hiring of personnel from such firms for personal services work supervised by  
18 proposers, prime contractors or subcontractors, and for which the firm has no input or  
19 involvement technically of the work performed by the personnel hired.  
20

21 WSF advised its New 130-Auto Ferries project consulting firms of this restriction  
22 prior to contracting with WSF. As such, the consulting firms have agreed to only  
23 perform work for WSF on this project.  
24  
25

26 **23. PHASE I PROTEST PROCEDURES**  
27

28 **A. Form and Substance**  
29

30 All protests regarding any content or portion of this RFP must be submitted to  
31 WSF as soon as possible after the proposer/protestant becomes aware of the  
32 reason(s) for the protest. All protests must be in writing and signed by the  
33 proposer/protestant or an authorized agent. Such writing must state all facts  
34 and arguments on which the proposer/protestant is relying as the basis for its  
35 action. Such proposer/protestant shall also attach, or supply on demand by  
36 WSF, any relevant exhibits referenced in the writing. Copies of all protests  
37 and exhibits shall be mailed or delivered by the proposer/protestant to the  
38 proposer against whom the protest is made (if any) at the same time such  
39 protest and exhibits are submitted to WSF. All protests shall be directed to:  
40

41 Tim McGuigan  
42 Director, Legal Services and Contracts  
43 Washington State Ferries  
44 2911 2<sup>nd</sup> Avenue Phone: 206.515.3601  
45 Seattle, Washington 98121-1012 Fax: 206.515.3605

1  
2 **B. Phase I Pre-Proposal Protests**  
3

4 To allow sufficient response time, all Phase I pre-proposal protests (i.e., prior  
5 to WSF's official selection of the best qualified proposers) must be received  
6 by WSF no later than 3:00 p.m. of the second business day after the Phase I  
7 Proposal Due Date. If the protest is mailed after the Proposal Due Date, but  
8 before the selection protest deadline, the proposer/protestant shall  
9 immediately notify WSF's Director, Legal Services and Contracts, by  
10 telephone, or some other means of rapid communication, that a protest has  
11 been made.

12  
13 WSF shall consider all the facts available to it, and issue a decision in writing  
14 within five (5) business days after receipt of the protest, unless more time is  
15 needed. The proposer/protestant and the proposer(s) against whom the protest  
16 is made (if other than the state) will be notified if a longer time is necessary  
17 and, if the additional time required affects the Proposal Due Date or the  
18 selection date, all proposers shall be notified.

19  
20 WSF's decision shall be final and conclusive. Selection of the best qualified  
21 proposers, if any, will be postponed until after WSF has issued its decision.  
22

23 **C. Post-Selection Protests**  
24

25 WSF shall immediately notify all unsuccessful proposers of WSF's selection  
26 decision. Pursuant to RCW 47.60.822, such decision is conclusive unless  
27 appeal from it is taken by an aggrieved firm to the Superior Court of Thurston  
28 County within five (5) calendar days after receiving notice of WSF's selection  
29 decision. The court shall hear any such appeal on WSF's administrative  
30 record for the project. The court may affirm WSF's decision, or it may  
31 reverse or remand the decision if it determines the action of WSF was  
32 arbitrary and capricious.

33  
34 Post-selection protests that do not comply with the above-specified  
35 procedures will not be considered.  
36  
37

38 **24. PRE - RFP REPRESENTATIONS**  
39

40 All project information previously provided by WSF to interested parties, whether  
41 verbal or in writing, is superseded by the contents of this RFP and all Addenda  
42 thereto. WSF shall not be liable to any party for (i) any prior representations made by  
43 WSF personnel; or (ii) the contents of any preliminary documents issued prior to this  
44 RFP.  
45  
46

1  
2 **25. PHASE I PREPARATION COSTS**  
3

4 WSF shall not be liable to any proposer for its proposal preparation costs or any other  
5 direct or indirect costs arising from a response to this RFP.  
6  
7  
8  
9

10  
11 ( END )  
12  
13

**PART 4**

**EXHIBIT A**

**SAMPLE**

**PROPRIETARY DATA STATEMENT**

**PART 4 EXHIBIT A**

**WASHINGTON STATE FERRIES**

**NEW 130 – AUTO FERRIES**

**DESIGN AND BUILD CONTRACT**

**SAMPLE**

**PROPRIETARY DATA STATEMENT**

1 This proposal contains proprietary financial and other trade secret information that is exempt  
2 from public disclosure by Washington State Ferries (WSF) pursuant to:

- 3
- 4 1. RCW 42.17.310(1)(h), because the proposal contains valuable formulae, designs,  
5 drawings and/or research data and its disclosure would produce private gain and  
6 public loss; and/or  
7
- 8 2. RCW 42.17.310(1)(m), because the proposal contains financial information submitted  
9 for the purpose of qualifying to submit a bid or proposal for a WSF construction or  
10 repair contract; and/or  
11
- 12 3. RCW 42.17.260(1), because the proposal contains trade secret formulae, patterns  
13 compilations programs, devices, methods and techniques that are protected by  
14 Chapter 19.108 RCW, Uniform Trade Secrets Act.  
15  
16  
17

18 ( END )